

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ULUCE HUDGINS, JR.,

Defendant-Appellant.

UNPUBLISHED

December 28, 2010

No. 293530

Wayne Circuit Court

LC No. 09-009940-FH

Before: M. J. KELLY, P.J., and K. F. KELLY and BORRELLO, JJ.

PER CURIAM.

Defendant appeals by right his bench trial conviction of aggravated stalking, MCL 750.411i. He was sentenced to two years' probation, the first nine months to be served in jail. We affirm.¹

Defendant's sole argument is that the evidence was insufficient to support his conviction. We disagree. We review de novo a challenge to the sufficiency of the evidence. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). We must view the evidence in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proven beyond a reasonable doubt. *Id.* Further, "[t]his Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses." *People v Williams*, 268 Mich App 416, 419; 707 NW2d 624 (2005).

The crime of aggravated stalking requires the prosecution to prove that defendant committed the crime of "stalking," MCL 750.411h(1)(d), and the presence of an aggravating circumstance specified in MCL 750.411i(2). *People v Threatt*, 254 Mich App 504, 505; 657 NW2d 819 (2002). Stalking is defined as "a *willful course of conduct* involving repeated or

¹ This appeal has been decided without oral argument pursuant to MCR 7.214(E).

continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim [to feel that way.]” MCL 750.411i(1)(e) (emphasis added). A “course of conduct” is a “pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose.” MCL 750.411i(1)(a). This Court has construed the phrase, “2 or more separate noncontinuous acts” to mean “acts distinct from one another that are not connected in time and space.” *Pobursky v Gee*, 249 Mich App 44, 47-48; 640 NW2d 597 (2001). Further, a defendant is guilty of aggravated stalking if he engages in stalking in violation of a restraining order. MCL 750.411i(2)(a).

Here, the victim testified that at 7 a.m. on April 2, 2009, he was loading his children into his van to take them to school. According to the victim, defendant, who lives in the victim’s neighborhood, came outside and stared at the victim in a “cold fixated” manner. The victim proceeded to leave his house and planned to stop at a gas station before taking his children to school. The victim avoided passing by defendant’s house, although it would have been the quicker route. Instead, the victim traveled to the gas station using an alternative route and arrived three to four minutes later. As he approached the station, the victim noticed defendant walking toward the station and staring at the victim’s van. The victim parked his vehicle near a gas pump and sent his children inside the gas station to buy some snacks. While the victim was parked at the gas pump, he saw defendant walk onto the premises of the gas station and enter the store at approximately 7:09 a.m. The victim then went to the front of the store and motioned for his children to come outside. The victim’s daughter was visibly upset because defendant was staring at her. At the time of these events, the victim had a personal protection order against defendant due to defendant’s prior history of stalking the victim.

These facts, viewed in a light most favorable to the prosecution, sufficiently support defendant’s conviction of aggravated stalking. Defendant clearly engaged in two noncontinuous acts, such that he committed the crime of stalking. His first act of harassment occurred when he stared menacingly at the victim and his children, while they boarded the family van. Defendant’s second act occurred when he entered the gas station. These acts are separate and distinct from one another, contrary to defendant’s position on appeal. Several minutes passed between the first and second act, during which defendant and the victim were separated in space and time. After the first incident, the victim purposely avoided driving by defendant’s house and drove out of defendant’s sight. Because of this interval, the continuity of defendant’s first action was broken and the incident at the gas station became a separate and distinct act. Further, because defendant committed the crime of stalking while he had a personal protection order prohibiting him from contacting the victim, it was not unreasonable for the trier of fact to find beyond a reasonable doubt that defendant committed the crime of aggravated stalking. Accordingly, defendant’s claim that the evidence was insufficient to support his conviction fails.

Affirmed.

/s/ Michael J. Kelly
/s/ Kirsten Frank Kelly
/s/ Stephen L. Borrello